Editor's note: Reconsideration denied by order dated Nov. 7, 1977

GLADYS LOMAX

IBLA 76-663 Decided March 4, 1977

Appeal from decision by the Eastern States Office, Bureau of Land Management, rejecting color of title application ES 13026.

Affirmed.

1. Color or Claim of Title: Generally

The granting of a class 2 color of title application is committed by statute to the discretion of the Secretary of the Interior. Where the public interest in retaining land embraced in such a claim in public ownership for recreational purposes outweighs any equities that the applicant has in the land, rejection of the application in the exercise of that discretion will be affirmed on appeal.

APPEARANCES: Richard L. Wilder, Esq., Bloomington, Indiana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Gladys Lomax has appealed from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated June 10, 1976, which rejected her color of title application, ES 13026. Her application was filed pursuant to the Color of Title Act, as amended, 43 U.S.C. § 1068 et seq. (1970), and the regulations at 43 CFR Part 2540. Specifically, appellant made application for what is defined in the regulations as a class 2 claim. This requires that the land be held in good faith and in peaceful, adverse possession by claimant and her predecessors in interest under color of title for a period of time commencing not later than January 1, 1901, and continuing to the date of application, during which period they must have paid taxes levied on the land by State and local governmental units. 43 U.S.C. § 1068(b) (1970); 43 CFR 2540.0-5(b).

Two grounds were given for the decision below. First, a field examination conducted by the BLM disclosed that the subject land is highly valuable for recreational use. Therefore, it was held that the public interest in retention of the land in Federal ownership outweighs the equities of the claimant and justifies the exercise of the Secretary's discretionary authority to reject the application. In addition, the BLM found on the basis of the field report that the land showed no signs of improvement, recent cultivation, or other form of actual possession or exercise of dominion by appellant over the land. For this reason, the BLM found that the actual physical possession or regular exercise of other acts of dominion over the land required to establish "adverse possession" of the premises is lacking.

Counsel for appellant alleges in the statement of reasons for appeal that the good faith of the appellant is demonstrated by a chain of title dating back to 1885. It is further alleged that appellant paid $ 2,000 to purchase the property in 1960. Counsel also asserts that appellant has paid taxes on the property and exercised the right of dominion over the land by leasing oil rights, allowing camping, occasionally parking a mobile home thereon, and evicting trespassers several times.

A Forest Service report in the case record discloses that the nearby Monroe Reservoir is the largest lake in the State of Indiana and has generated greatly increased use of land in the area for recreation purposes. The subject land is located in close proximity to one of the primary access routes to the reservoir. The report cites the need for public use of the subject land for "dispersed recreation" in the vicinity of the reservoir.

The report of the field examination conducted by the BLM appearing in the case file confirms that the area constitutes part of an extremely popular recreation complex. The BLM report found that outdoor recreational activities including fishing, hunting, hiking, boating, and camping make up the major uses of land in the area. The record also discloses that the subject land was withdrawn for national forest purposes by P.L.O. 4160. 32 F.R. 3021 (February 17, 1967). Finally, the report of field examination discloses the absence of any improvements on the land.

The issue raised by this appeal is whether the rejection of a class 2 color of title application in the public interest where the value of the land for public recreational purposes outweighs any equities the applicant has in the land is a proper exercise

of the Secretary's discretionary authority with respect to such applications. 1/

The authority for class 2 color of title applications is statutory:

> The Secretary of the Interior * * * (b) may, in his discretion, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for the period commencing not later than January 1, 1901, to the date of application during which time they have paid taxes levied on the land by State and local governmental units, issue a patent for not to exceed one hundred and sixty acres of such land * * *.

43 U.S.C. § 1068(b) (1970). (Emphasis added.)

[1] Action on a class 2 color of title application under 43 U.S.C. § 1068(b) (1970) is committed by the terms of the statute to the discretion of the Secretary of the Interior. Hamel v. Nelson, 226 F. Supp. 96 (N.D. Cal. 1963). Where the public interest in retaining land embraced in a class 2 color of title claim in public ownership for recreational purposes outweighs any equities that the applicant has in the land, it is appropriate for the Secretary to reject the color of title application in the exercise of his discretionary authority. Martin L. Fadden, Sacramento 065014 (July 24, 1964), approved by Assistant Secretary, September 30, 1964.

The factual context of the Martin L. Fadden case, supra, where rejection of a class 2 color of title claim was upheld on appeal, is similar to the present case in several pertinent aspects. No part of the land in the former case had been reduced to cultivation by the applicants. Further, in the Fadden case, supra, no structures or improvements had been erected on the land. The applicants in Fadden had no equities other than payment of the purchase price and taxes. The land involved in the Fadden application, like the land in the present case, was disclosed by BLM field examination to be suitable for recreation purposes. Under these circumstances, the exercise of discretion in rejecting the application for the public land was appropriate.

1/ In view of the fact that we find this issue dispositive of the appeal, it is unnecessary to review the decision below with respect to the elements required to establish adverse possession.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Edward W. Stuebing
Administrative Judge